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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/076,591	02/19/2002	Guy Itzkovich	P 265363 Z-3017REG	2282
909	7590	06/09/2004	EXAMINER	
PILLSBURY WINTHROP, LLP P.O. BOX 10500 MCLEAN, VA 22102			BUI, LUAN KIM	
		ART UNIT	PAPER NUMBER	
		3728		

DATE MAILED: 06/09/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/076,591	ITZKOVITCH, GUY
	Examiner	Art Unit
	Luan K Bui	3728

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 27 April 2004.

2a) This action is **FINAL**. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-21 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1,9,10 and 18-21 is/are rejected.

7) Claim(s) 2-8 and 11-17 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:

- Certified copies of the priority documents have been received.
- Certified copies of the priority documents have been received in Application No. _____.
- Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) Notice of References Cited (PTO-892)

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/18/03.

4) Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.

5) Notice of Informal Patent Application (PTO-152)

6) Other: _____.

Specification

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

The following is a quotation of 37 CFR 1.71(a)-(c):

- (a) The specification must include a written description of the invention or discovery and of the manner and process of making and using the same, and is required to be in such full, clear, concise, and exact terms as to enable any person skilled in the art or science to which the invention or discovery appertains, or with which it is most nearly connected, to make and use the same.
- (b) The specification must set forth the precise invention for which a patent is solicited, in such manner as to distinguish it from other inventions and from what is old. It must describe completely a specific embodiment of the process, machine, manufacture, composition of matter or improvement invented, and must explain the mode of operation or principle whenever applicable. The best mode contemplated by the inventor of carrying out his invention must be set forth.
- (c) In the case of an improvement, the specification must particularly point out the part or parts of the process, machine, manufacture, or composition of matter to which the improvement relates, and the description should be confined to the specific improvement and to such parts as necessarily cooperate with it or as may be necessary to a complete understanding or description of it.

2. The specification is objected to under 37 CFR 1.71, as the specification, as originally filed, does not provide support for the new matter as now claimed. The specification as filed does not provide support for "wherein one of the case portion and the cover portion has an elongated level storage space formed therein" as recited in claim 21, because the specification only discloses the cover portion.

3. Claim 21 is finally rejected under 35 USC 112, first paragraph, for the reasons set forth in the objection to the specification.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1, 9, 19 and 21 are finally rejected under 35 U.S.C. 103(a) as being unpatentable Vasudeva (5,887,715). Vasudeva discloses a tool container in the embodiment of Figures 7-8, comprising a case portion (1) having a storage space and a handle (2) and a cover portion (3, 46) pivotally attached to the case portion. The cover portion having an elongated storage space (41, 90) and a secondary cover portion (42) movably mounted with respect to the cover portion for covering the elongated storage space. Vasudeva also discloses the other limitations of the claims except for the handle being connected to the cover portion in lieu of the case portion. It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Vasudeva to provide the handle in the cover portion to facilitate carrying the tool container and since the selection of the specific location for the handle such as connected to the cover portion as claimed or to the case portion of Vasudeva would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well and inasmuch as applicant's specification does not state that using the specific location as claimed solves any particular problem or yields any unexpected results. The elongated storage space of Vasudeva is capable of holding a level and the weight of the secondary cover portion is tended to hold the secondary cover portion in its closed position.

6. Claims 10, 18 and 20 are finally rejected under 35 U.S.C. 103(a) as being unpatentable over Vasudeva (5,887,715) in view of Mitchell (4,058,210). Vasudeva discloses a tool container comprising a case portion (1) having a storage space and a handle (2) and a cover portion (3, 46) pivotally attached to the case portion. The cover portion having an elongated storage space (41, 90) and a secondary cover portion (42) movably mounted with respect to the cover portion for covering the elongated storage space. Vasudeva also discloses the other limitations of the claims except for the handle being connected to the cover portion in lieu of the case portion and a level being disposed in the elongated storage space. Mitchell shows a tool case having a small compartment for holding a small level (99) (Figures 4-5). It would have been obvious to one having ordinary skill in the art at the time the invention was made in view of Mitchell to modify the tool container of Vasudeva so it includes a level disposed in the elongated storage space to provide more convenience for the user and the handle is connected to the cover portion to facilitate carrying the tool container and since the selection of the specific location for the handle such as connected to the cover portion as claimed or to the case portion of Vasudeva would have been an obvious matter of design choice inasmuch as the resultant structures will work equally well and inasmuch as applicant's specification does not state that using the specific location as claimed solves any particular problem or yields any unexpected results.

Allowable Subject Matter

7. Claims 2-8 and 11-17 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

Applicant's arguments filed on 4/27/2004 have been fully considered but they are not deemed to be persuasive.

Applicant argues that "Vasudeva does not disclose a tool container including a cover portion having an elongated level storage space ..." is noted. This is not persuasive because Vasudeva discloses the cover portion (3, 46) having an elongated space (41, 90) therein and the secondary cover (42) for closing the elongated space. The elongated space of Vasudeva is capable of holding a level because the intended use of the claimed invention for storing a level, it has been held that a recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus satisfying the claimed structural limitations. If the prior art structure is capable of performing the intended use, then it meets the claim. *Ex parte Masham*, 2 USPQ2d 1647 (1987).

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Luan K. Bui whose telephone number is (703) 305-5861. If in receiving this Office Action, it is apparent to Applicant that certain documents are missing from the record for example copies of references cited, form PTO-1449, form PTO-892, etc., requests for copies of such papers should be directed to TC 3700 Customer Service at (703) 306-5648.

Any inquiry of a general nature or relating to the status of this application should be directed to the Customer Service whose telephone number is (703) 872-9301. Facsimile correspondence for this application should be sent to (703) 872-9306 for Formal papers and After Final communications.



lkb
June 7, 2004

Luan K. Bui
Primary Examiner